

CRITICAL ISSUES

The Restructuring Initiative Workgroup (RIW) identified a number of critical issues that must be addressed and/or taken under advisement prior to restructuring the IHS or DHHS.

The RIW identified critical issues. These are issues that are fundamental and must be adhered to and acknowledged if there is to be meaningful dialogue between the AI/AN tribes and the US Government. The eight issues are as follows:

- I. TRIBAL SOVEREIGNTY
- II. FEDERAL TRUST RESPONSIBILITY
- III. GOVERNMENT-TO-GOVERNMENT RELATIONSHIP
- IV. TRIBAL CONSULTATION
- V. UNIQUE STATUS OF INDIAN HEALTH SERVICE
- VI. SELF DETERMINATION
- VII. INDIAN HEALTH SERVICE BUDGET
- VIII. UNIQUE CONSIDERATIONS
- IX. PRE-PAID HEALTH CARE

PREAMBLE:

American Indians and Alaska Natives (AI/AN) Tribes are sovereign nations and cannot be viewed as a department of the government; therefore, legal sovereignty and statutory obligations arrived at by nations previously entered into and agreed to cannot be viewed as a departmental change initiative. Nations deal with nations on a government to government basis in this respect, no changes, therefore, can be implemented without proper and full consultation and agreement of those members of those nations. Beyond restructuring within the Department of Health and Human Services (DHHS) and Indian Health Service (IHS), tribal leaders and Indian community consultation is required and is necessary before trust agreements/relationships can be changed.

The IHS budget is a separate appropriation and Congressional Legislation is required prior to making any changes or incorporating IHS programs with other DHHS programs. IHS was established under separate Legislation (Snyder Act) and provides Programs, Functions, Services, and Activities (PFSAs) authorized under and separate legislation such as the Indian Health Care Improvement Act.

I. TRIBAL SOVEREIGNTY:

AI/AN tribes and villages are sovereign nations as recognized by the US Constitution, Treaties and Statutes. Tribal Sovereignty must not be diminished. The Administration, Congress and Federal Agencies must continue to recognize and support tribes' sovereign status. The Federal Government must not be allowed to diminish the sovereign identity of Tribal Governments._

II. FEDERAL TRUST RESPONSIBILITY:

In an attempt to compensate AI/AN in exchange for land and resources, the Federal Government entered into treaties with tribal Governments promising health care and many other services. This Federal Trust Responsibility must not be diminished. Tribes and Agencies dealing with Indian issues need to educate the Administration, Congress and other Federal Agencies regarding the Federal Trust responsibility. All aspects of government, starting with the Administration, must take a more active role in identifying and understanding Indian issues and treaty rights. As part of its' trust responsibility, DHHS needs to explore ways to extend their services into AI/AN communities.

The Tribes have requested that the Agency on their behalf request that the Office of General Council (OGC) to research the legality of fund transfers from IHS and Tribal programs to other OPDIVs within DHHS.

III. GOVERNMENT –TO – GOVERNMENT RELATIONSHIP:

Tribes have a unique relationship with the US Government. It is one of Government to Government. This relationship must be recognized and strengthened. Tribes need to continue to educate the Administration, Congress, and Federal Agencies of this relationship. The government-to-government relationship must be institutionalized to produce meaningful dialogue. The dialogue must exist between the tribes and the Executive and Legislative branches of the Federal Government. Because of their Governmental status, Tribes should not have to deal with State Governments to access federal funds or programs. To improve the relationship, Legislation should be enacted to elevate the Director of IHS to an Assistant Secretary level. There also needs to be a liaison between the White House and AI/AN tribes. The liaison would serve as a point of contact to inform the Administration on the history and status of AI/AN tribes. This would also enable the tribes to get issues to the forefront of the Administration's agenda. The liaison would assist the Administration in addressing the consultation directives and policies as they relate to AI/AN tribes. Tribes have to continue to explore the concept of the 51st State in order to slow the growing trend of State Block Grants. State grants continue to blur the government-to-government status of tribes by placing an additional level of government administration between the tribes and the Federal Government. The Government-to-Government relationship exists between the Federal Government and the Tribal government. The tribes need to be elevated to the level of the States in the process and not a level below them.

As part of the Government-to-Government relationship the tribes ask that the Secretary make a commitment to initiate a policy that directs any savings from the IHS be re-direct towards the mission of IHS.

IV. TRIBAL CONSULTATION:

In order to respect the inherent governmental relationship that exists between the Tribes and the Federal Government, tribal consultation must be strengthened. Existing consultation policies must be enforced and adhered to. The Administration and Agency heads should work to establish listening conferences or regional meetings to gather input from the tribes and solicit approval for AI/AN directed programs. It should be noted that tribes do not recognize the workgroups reports or meetings as meeting the Department's responsibility to consult with tribes on changes that impact them. The Secretary should send a Dear Tribal Leader letter to all the Federally recognized tribes explaining his "one HHS" program. The Administration for Native Americans (ANA) Committee needs to be activated. Every effort must be made to establish meetings between the Administration and Tribal Leaders.

The Secretary's has the authority and implements policy decisions on how to implement the Office of Management and Budget (OMB) budget decisions. This would allow the Secretary the option to exempt or provide relief to budget reductions for IHS.

V. UNIQUE STATUS INDIAN HEALTH SERVICE:

The IHS is a unique Operating Division within the Department of Health and Human Services because it is charged with fulfilling the trust responsibility to AI/AN tribal governments. The IHS is protected and governed by statutory authority including, but not limited to the Snyder Act, Indian Health Care Improvement Act, Indian Self Determination and Education Assistance Act, and Indian Preference as established by Title 25, USC 472, 472a, and 479. The IHS is a unique Operating Division within DHHS in that it is the only division with Direct Care as its' primary mission. The majority of the IHS program is field based in remote locations providing direct health care to AI/AN tribes. Many of the services provided by the IHS are based on treaty and trust responsibility unlike any other OPDIV within DHHS.

VI. SELF DETERMINATION

Public Law 93-638 Indian Self Determination has empowered the tribal Governments the opportunity to choose the management direction they want their health care system to take. The tribes can choose to operate their health care system under a Title I Self Determination Contract, a Title V Self Governance Compact, or direct federal (IHS) operated. The tribal governments under Title I Contracts or Title V Compacts currently operate approximately half of the AI/AN health systems. The remainders of the tribal governments have selected a direct Federal health delivery system administered by the IHS. Under PL 93-638, the tribes have been legislated the right to select the both the level and the direction of the management of health care. As tribes continue to exercise their right to choose, the IHS will continue to change.

Because the tribes have assumed the operation of fifty percent of the health care programs, the Agency's responsibilities and administrations functions were

transferred to the tribes and dollars had to be made available for tribes to fund the these new responsibilities. The Agency had to restructure to address the reduced administrative and health delivery responsibility and to identify dollars that could be transferred to the tribes to fund the new programs, services, functions and activities they assumed. The Agency has restructured (over 55% staffing reduction at the Area and HQ level) to improve the efficiency and reduce administrative costs. The savings have been transferred to tribes and field sites to improve health care services.

VII. INDIAN HEALTH SERVICE BUDGET:

The IHS budget is not a part of the DHHS budget, but a separate appropriated budget designated for the provision of health care services to AI/AN people. In comparison the IHS budget comprises less than 0.614% of the total DHHS budget. The IHS has never been fully funded and has continually experienced a net loss of resources therefore; disparity in the level of need funding continues to grow. IHS has recently downsized and is operating at a minimal personnel level. Headquarters level staffing was reduced by 58%, Area (regional) by 57%, and field or operating programs grew by 11%. This was during a time when mandated services increased at the field level as well as the increase in the population served. This increase in demand was addressed with minor staff increases at the field level only. The IHS budgets historically have not kept pace with inflation, and have resulted in a significant net loss of operational capital. In the past, tribes have actively participated in the IHS budget formulation process. Because of the extensive impact any budget reduction has on AI/AN health care, it is essential that the tribes have an opportunity to review and comment on the budget early in the formulation process.

It is imperative, that any savings that are created with downsizing of IHS must be re-directed back into the IHS to address its' mission. The IHS cannot afford a reduction in the administrative services due to previous reductions. Rather than reducing funding, we need to insure that the dollars are redirected to direct services in order to reduce the negative impact any funding reduction would have.

VIII. UNIQUE CONSIDERATIONS:

The AI/AN population continues to suffer from greater health disparities as compared to the US general population. Under the Self Determination Act, Tribes have assumed over 50% of the IHS programs. The funds appropriated to the IHS are considered tribal shares absent the residual functions (inherent federal functions), therefore any movement of funds will impact tribal programs at all levels regardless of how their program is operated (direct/contract/compact). These funds have been transferred under binding contracts and compacts with agreed upon fund specific amounts. Given the fact that health disparities continue to grow among the AI/AN

population, any reduction in funding has a profound negative impact on their health status.

The IHS and DHHS must review and consider the recommendation made by the Public Health workgroup and the Agency Strategic Planning Committee. Their findings have helped to identify the needs of the AI/AN people. The Agency must work to blend the findings of committees like these with the President's and the Secretary's Initiatives when possible, and identify those areas and issues that fall outside of the initiatives. The IHS must recognize and support the issues of sovereignty, trust responsibility, and government-to-government relationships all while carrying out its health care responsibilities.

IX. PRE-PAID HEALTH CARE:

American Indians and Alaska Native Tribes (AI/AN) have pre-paid for health care benefits for their people through the loss of millions of acres of land and other resources. Some of the original treaties specifically state that health care will be provided as a part of the US Government's responsibility. The discussion of whether health care services for AI/AN tribes are or should be viewed as an entitlement is currently under serious discussion and consideration by a number of National workgroups and committees. It is the position of a number of Tribal Governments, that health care was an integral part of their respective treaties between the Tribe and the US Government. The pending reauthorization of the Indian Health Care Improvement Act would go a long way in clarifying the role of the Federal Government as it pertains to AI/AN health care issues. It was the view of the RIW members that the Indian Health Care Improvement Act should be permanent.

Recent studies have validated the significant health disparities that exist with AI/AN when compared to other minorities and the disparities that exist between AI/AN when compared to all other races within the USA. The Level of Need funding study shows that many tribes are funded below the 50% level of need funding. It should be noted that the Federal Government spends more per capita on the incarcerated in our prisons than on AI/AN. Given the magnitude of the health disparities and the limited funding, the members felt that this was an excellent opportunity for the IHS to clarify its' Patient's Bill of Rights. This would help to clarify the quality and level of services patients should expect.